IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR,

Complainant,

vs.

T. CARLTON RICHARDSON,

Respondent.

_____/

CASE NO. 76,395

[TFB NO. 90-10,513(06A)]

REPORT OF REFEREE

I. **SUMMARY OF PROCEEDINGS**: Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to the Rules of Discipline, a hearing was held on the 17th day of January, 1991.

The following attorneys appeared as counsel for the parties:

For the Florida Bar, Bonnie L. Mahon, Esq.

For the Respondent, T. Carlton Richardson, Esq., pro se.

II. **FINDINGS OF FACT AS TO EACH ITEM OF MISCONDUCT OF WHICH THE RESPONDENT IS CHARGED**: After considering all the pleadings and evidence before me, pertinent portions of which are commented upon below, I find:

AS TO COUNT I

THE FLORIDA BAR CHARGES THE RESPONDENT HAS VIOLATED RULE 4-3.1 (A LAWYER SHALL NOT BRING A FRIVOLOUS CLAIM)

The basis for the Complaint that was filed by the Florida Bar is that on the 28th day of September, 1989, the Respondent, T. Carlton Richardson, filed a lawsuit against the Honorable F. Dennis Alvarez and others in the case styled, T. Carlton Richardson, Plaintiff, vs. Roosevelt Jones, Sr., Individually and as Personal Representative of the Estate of Luela King, Deceased; Perry L. Jones; Honorable F. Dennis Alvarez, Judge; Second District Court of Appeals; Supreme Court of Florida; Charles R. Wilson; and Kennan G. Dandar, Defendants, Civil Action No. 89-2694 SSH United States District Court of the District of Columbia.

This federal lawsuit filed by the Respondent resulted from probate and appellate proceedings in the State of Florida. The Respondent had been an attorney of record in a probate proceeding in the Fourteenth Judicial Circuit of the State of Florida in and for Hillsborough County. The style of the Hillsborough case was In re: the State of Luela King, Deceased; Roosevelt Jones, Sr., Personal Representative, Case No. 84-732, Division A.

The Respondent had been the initial attorney of record for the Personal Representative in this probate proceeding. Ultimately, the Respondent withdrew and was discharged as attorney of record. The new attorney of record asked the Hillsborough Circuit Court, Probate Division, for a determination and reevaluation of attorney's fees and costs that Mr. Richardson had charged in this case. Judge Alvarez ruled that the Respondent must return certain attorney's fees received or charged.

Judge Alvarez, on the 18th day of March, 1986, entered two Orders entitled (1) "Order Granting Motion for Reimbursement of Excessive Attorney's Fees and Denying Motion to Dismiss and Motion for Summary Judgment", and (2) "Amended Order on Petition for Discharge, Objection to Petition for Discharge, and Response to Objection for Discharge and Request for Refund of Attorney's Fees". The Respondent appealed to these Orders to the Second District Court of Appeals.

In his appeal to the Second District Court, T. Carlton Richardson argued that because he had been paid by Roosevelt Jones personally, rather than having been paid from the Estate of Luela King, Deceased, the Court had no authority to order him to make reimbursement. The Second District Court, in its ruling on the 29th day of May, 1987, held, "We find this argument to be without merit." (T. Carlton Richardson v. Roosevelt Jones, Sr., et al Second District Court, Case No. 86-1025, Appeal filed May 29, 1987) The Second District Court went on to say, "The court's order simply carries out its obligation to review and determine the reasonableness of compensation to be paid to an attorney for a personal representative." (T. Carlton Richardson v. Roosevelt Jones, Sr., et al Second District Court, Case No. 86-1025, Appeal filed May 29, 1987)

The Second District Court remanded this case back to the probate court in Hillsborough County so that the probate court could correct the amount of reimbursement. Pursuant to the remand, a hearing was held and the adjustment was made.

After the adjustments were ordered by the Probate Court, the Respondent again attempted an appeal to the Second District Court of Appeal. The Second District Court dismissed the second appeal on the grounds that it was not timely filed.

The Respondent then sought a Writ of Mandamus from the Florida Supreme Court on the 15th day of September, 1989, seeking to compel the Second District Court to reinstate his second appeal and to vacate the latest judgment entered by Judge Alvarez. (The Florida Bar Exhibit #1, in evidence, paragraph 16 through 26). The Florida Supreme Court denied Mr. Richardson's Petition for Writ of Mandamus.

It should be noted at this juncture that during Mr. Richardson's forays into the Florida Court System, the Florida Bar instituted disciplinary proceedings against him. The Florida Bar charged him with violating DR 2-106. The referee found him guilty of charging a client a clearly excessive fee. On April 19, 1990, the Florida Supreme Court entered an opinion suspending the Respondent for 91 days. On the 14th day of February, 1991, the Florida Supreme Court denied the Respondent's Motion for Rehearing and finalized its opinion.

Additionally, it should be noted that the referee in the first disciplinary proceedings against the Respondent was also the referee herein. During the first disciplinary proceeding, the Respondent argued before this referee all the issues that were litigated in the Circuit Court of the Thirteenth Judicial Circuit and before the Second District Court of Appeals. Further, the

Respondent, T. Carlton Richardson, argued in his first disciplinary proceeding all of the issues that he set forth in his federal complaint and that he dredged up and argued during these disciplinary proceedings.

The Respondent's arguments have become a "laborious broken record". He has been 'round and 'round the barn and even up in the hayloft. The Respondent had his day in the state circuit court; he went before the Second District Court of Appeals; he argued and lost; he was denied a second trip to the Second District Court of Appeals; he petitioned the Supreme Court for a Writ of Mandamus and was denied; he argued all of the facts and issues before a referee; he was denied and the Supreme Court affirmed the referee. Thus, in the presence of unmistakeable defeat and in the clear absence of a legal basis for his case, Mr. Richardson pursued relief in the federal court.

Swiftly and decisively the federal court entered its Order on the 31st day of January, 1990. The federal court ruled that "defendant's motions to dismiss are granted. Furthermore, the Court having found that the Complaint is both MANIFESTLY FRIVOLOUS AND MALICIOUS, ..." (Emphasis added.)

By simply adopting the decision of the Federal District Court, it would be easy to find that the Respondent, T. Carlton Richardson, violated Rule 4-3.1. Looking at the facts, it appears to be simple: The Respondent filed a federal lawsuit against a circuit court judge, the Second District Court of Appeals, and the Florida Supreme Court. The federal district court, in a very short

and terse opinion, ruled that the complaint was "MANIFESTLY FRIVOLOUS AND MALICIOUS"? THUS, A VIOLATION OF SAID RULE??

After much deliberation and research, the Referee in this matter concluded that the imposition of Rule 11 sanctions by the United States District Court did not necessarily constitute a per se violation of Florida Bar Rule 4-3.1.

The Florida Bar Complaint against the Respondent states in paragraph 7 thereof, "The Respondent KNEW OR SHOULD HAVE KNOWN that Judge Alvarez had absolute immunity for his actions since the entry of an Order to Refund Attorney's Fees is a function normally performed by a judge acting in his judicial capacity." (Emphasis added.) Paragraph 8 of the Complaint reads "The Respondent KNEW that the lawsuit filed against Judge Alvarez, et al, was frivolous and malicious." (Emphasis added.) Also, in paragraph 9 of the Complaint, the Florida Bar stated, "Further, the Court found that Respondent's lawsuit was both manifestly frivolous and malicious." Thus, the Florida Bar in its Complaint in paragraph 10, concluded:

> By reason of the foregoing, Respondent has violated Rule 4-3.1 (a lawyer shall not bring a frivolous claim); Rule 4-3.5(c) (a lawyer shall not engage in conduct intended to disrupt a tribunal); and Rule 4-8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

..... Can logic as set forth in the Florida Bar Complaint be sustained.

A very interesting case, involving this same issue was In the Matter of the Disciplinary Proceedings Against Ralph M. Lauer, Attorney at Law, 324 N.W. 2d 432 (Wis. 1982). In this Wisconsin case, an attorney was disciplined for bringing a frivolous lawsuit.

The Wisconsin trial court found the attorney had violated a state statute which prohibited the filing of frivolous lawsuits. The Wisconsin Bar then instituted disciplinary action against the attorney.

Before the Wisconsin Supreme Court the attorney argued that he was found guilty of violating the disciplinary rule solely on the basis of the trial court's determination that he had violated a state statute against bringing frivolous lawsuits.

The Wisconsin Supreme Court held "it does not follow that where there is a violation of the statute there must be a violation of the disciplinary rule." Id at 438.

The Lauer case is interesting in that it analyzes a statute which would impose attorney's fees for bringing frivolous lawsuits. Florida has a similar statute in this regard. [See Section 57.105, Florida Statutes (1988)]. In comparing the Wisconsin Statute and the disciplinary rule, the Wisconsin Supreme Court stated that the disciplinary rule is truly distinguishable from the state statute. The disciplinary rule requires an element of subjective bad faith; that the complainant actually KNOWS OR SHOULD KNOW that the action he is bringing is frivolous. The Lauer Court in reaching its conclusion said

> ... the standard to be applied under the **STATUTE** is not what was in the attorney's mind and whether his or her actions were deliberate or impliedly intentional, but, rather, the **OBJECTIVE STANDARD** of what a reasonable attorney would have done under the same or similar circumstances. Id at 438. (Emphasis added.)
>
> In making that determination in the context of SCR 20.36(1)(b) [Wisconsin **DISCIPLINARY RULE**], we find it appropriate to apply the **SUBJECTIVE STANDARD** that is,

> whether the attorney, in fact, knew the claim he was advancing was unwarranted under existing law and could not be supported by a good faith argument for an extension, modification or reversal of existing law. Id at 439 (Emphasis added.)

The Court also made a very appropriate statement which has applicability to the case before this Referee:

> However, this is a disciplinary proceeding, and the test to be applied under the statute is not necessarily applicable. Here we are concerned not with the costs, both in terms of time and money, incurred by litigants and the court system itself as a result of the bringing of a frivolous action; rather, WE ARE TO DETERMINE WHETHER AN ATTORNEY HAS VIOLATED A DISCIPLINARY RULE WHICH SETS FORTH "THE MINIMUM LEVEL OF CONDUCT BELOW WHICH NO LAWYER CAN FALL WITHOUT BEING SUBJECT TO DISCIPLINARY ACTION." SCR 20.002 Id at 439 (Emphasis added.)

Thus, it was very aptly stated in Lauer that such knowledge on the part of an attorney is an issue of fact, and in disciplinary proceedings such knowledge must be established by clear and satisfactory evidence.

The application of a subjective standard requiring that an attorney **KNOW** that the lawsuit or cause he is advancing is frivolous is a strong standard. Is this standard too strong? The Wisconsin Supreme Court thought not. It addressed the argument that a less stringent objective standard would discourage the propounding of innovative theories of law. The Respondent in Lauer argued that such an application of a disciplinary rule would stifle an attorney's honest and zealous representation of a client. However, the Court very succinctly and clearly dispelled such arguments by holding,

> We do not share the appellant's fear that if he is disciplined for his conduct in bringing the second circuit court action attorneys will be stifled in the advancing of innovative theories of law or in the honest and zealous representation of their clients. Under our rules of professional responsibility, an attorney's innovative theories and zeal are not without limits; those limits are drawn, in part, by existing law and good faith argument for changing existing law. Id at 439.

Extensive research discloses that there are no Florida cases on point, such as the Lauer case, which define the standard of review for Florida Bar Rule 4-3.1. Thus, this Referee is venturing into new territory. The Florida Bar Rule 4-3.1, Meritorious Claims and Contentions, reads as follows:

> A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

Compare the Florida Disciplinary Rule with the Wisconsin Rule SCR 20.36, "Representing a Client Within the Bounds of the Law":

> (1) In his or her representation of a client, a lawyer may not: ... (b) KNOWINGLY advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith arguments for an extension, modification, or reversal of existing law. ... Id at 435. (Emphasis added.)

In comparing these two Disciplinary Rules, the Florida rule does not specifically require scienter. Thus, in attempting to ascertain the standard to be applied in the State of Florida, one must turn to the comments set forth to this rule:

> The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining

> the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.
>
> The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not frivolous even thought the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person or if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

Thus, a review of the comment to Florida Disciplinary Rule 4-3.1 leads one to conclude that an action may be determined to be frivolous for two reasons: **first**, if the action is taken to harass or maliciously injure a person; and **second**, if no good faith argument exists for the extension, modification, or reversal of existing law. Filing a complaint in the absence of a good faith argument for the extension, modification or reversal of existing law also constitutes a violation of Rule 11, Federal Rules of Civil Procedure. Because the comment to the Florida Disciplinary Rule is so similar to the language of Rule 11, Federal Rules of Civil Procedure, an analysis of the case law on Rule 11 is instructive in establishing a standard of review for Florida Disciplinary Rule 4-3.1. No showing of willfulness or subjective bad faith is necessary to warrant the imposition of sanctions for filings made without a good faith argument for and extension, modification, or reversal of existing law under Rule 11.

In contrast, a showing of subjective bad faith, or mens rea, appears to be required to prove an action was taken to harass or

maliciously injure a person under the Florida Disciplinary Rule. Consequently, Florida Bar Rule 4-3.1 may be violated for two distinct and different reasons, each requiring a different standard of review.

While an element of willfulness or malice would have to be shown to prove harassment or malicious injury under the Florida Disciplinary Rule, that issue need not be reached in this case. A violation of Rule 4-3.1 may be shown if no good faith argument exists for the "extension, modification, or reversal of existing law". This is the identical language found in Rule 11, Federal Rules of Civil Procedure, which requires a less stringent and objective standard of review. Golden Eagle Dist. Corp. v. Burroughs Corp., 801 F.2d 1531, at 1536 (9th Cir. 1986). While the imposition of sanctions on the Respondent for Rule 11 violations by the United States District Court is not conclusive as to a violation of a Florida Disciplinary Rule, it is persuasive. Indeed, the findings in this matter concerning the existence of a good faith argument for the extension, modification, or reversal of existing law should be guided by the objective standard of analysis established for Rule 11 violations. Eastway Construction Corp. v. City of New York, 762 F.2d 243 (2d Cir. 1985). The standard of conduct required under Rule 11 is simply what a reasonable attorney would have done under the same or similar circumstances.

Therefore, in applying the **OBJECTIVE STANDARD**, what do the facts, the evidence, and the case law show us about the proceeding before this referee?

Most prevalent, the facts show us that the Complaint filed in the Federal District Court by the Respondent herein is nothing more than a mishmash and a re-hash of everything that he argued in the state court system. The Respondent is attempting one more time to sneak back up to bat, out of rotation, and take a swing at the court system of the State of Florida after he had fully and completely had his turn at the plate.

In ruling on another similar "re-hash" case, the United States Court of Appeals, Eleventh Circuit, in the case of Patterson v. Aiken, 841 F.2d 386 (11th Cir. 1988) held that "[A] man of Patterson's education, given a reasonable amount of time in a law library, could determine that once a judgment has been entered one cannot file another lawsuit to object to the conduct of the first." The District Court in the Patterson case applied the standard of **"REASONABLENESS UNDER THE CIRCUMSTANCES"**. The District Court was confronted with sanctions pursuant to Federal Rule 11.

The Patterson case has certain application to the case sub judice. Patterson, in his defense before the federal circuit court, argued that he did conduct research before filing the case which prompted the Rule 11 sanctions. The federal circuit court, in its opinion, pointed out that the Federal Rule 11 did not require a showing of subjective bad faith. The bad faith element that should be applied in Federal Rule 11 cases must be determined by an **OBJECTIVE STANDARD OF REASONABLENESS.**

In the case before this referee, Mr. Richardson argued that he had done research before he filed his federal case and he also

presented testimony from two eminent law professors from Howard University to show that he had discussed this case with them. It was an honor for this referee to have these witnesses come forth and present testimony on Mr. Richardson's behalf, but unfortunately for Mr. Richardson, the cross-examination by Bar Counsel established by clear and convincing evidence that both professors were misled by the Respondent as to his intentions and/or the specific pleading to be filed.

Professor Isaac R. Barfield stated under cross-examination that he was not aware that the Respondent in his federal complaint was seeking damages against the judges and justices of the State of Florida. He was not aware of the specific language of the final complaint filed in the federal court.

Professor Henry H. Jones Sr. conceded under cross-examination that the final complaint, as filed in the federal district court, should have been better drafted and issues applicable to federal court set forth.

The Respondent did not meet any burden of proof of any nature or kind to establish any good faith on his part in filing the federal lawsuit.

The Patterson case also speaks to another issue that is applicable to this case. Mr. James T. Patterson was representing himself, pro se, before the United States District Court for the Northern District of Georgia. Likewise, in this case, T. Carlton Richardson Jr. is representing himself, pro se. In every pro se case, a judge or referee must guard against being overly

sympathetic to the pro se litigant. One is always reminded of that famous maxim or caveat that is espoused by every law school for the benefit of the law students, to wit: "An attorney who represents himself has a fool for a client."

The federal court in the Patterson case in addressing the "pro se" issue stated:

> While this standard takes into account the special circumstances that often arise in pro se situations, pro se filings do not serve as an "impenetrable shield, for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already over-loaded court dockets." Id at 387.

Back to the major issue at hand. Did the Respondent make reasonable inquiry as to whether the federal complaint was warranted by existing law or a good faith argument for the extension, modification or reversal of existing law?

Reasonable inquiry by a graduate of a law school, a certified member of the Florida Bar, or any layperson would clearly show that the lawsuit as filed by the Respondent, T. Carlton Richardson, was clearly unwarranted on the grounds of (1) **JUDICIAL IMMUNITY**, (2) **RES JUDICATA**, and (3) **LACK OF FEDERAL JURISDICTION OVER THESE PROBATE PROCEEDINGS.**

JUDICIAL IMMUNITY: A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors. Stump v. Sparkman, 98 S.Ct. 1099 (1978). Clearly, under common law a judge enjoys absolute immunity when he or she has subject matter jurisdiction over the matter forming the basis for such liability. Dykes v. Hosemann 776 F.2d 942 (11th Cir. 1985).

The Respondent argued before this hearing officer that Judge Alvarez did not have jurisdiction to hear his fee disputes because Judge Alvarez was sitting as a probate judge and, that the fees in dispute were both private fees and probate fees. Clearly, Judge Alvarez had probate jurisdiction **AND** he also had general jurisdiction. Section 26. 012, Florida Statutes (1990). It would be ludicrous to argue that Judge Alvarez could not hear both a probate matter and a general jurisdiction matter.

The Honorable David Patterson, Judge of the Second District Court of Appeals, in a recent case involving a similar question that was before the Honorable Robert F. Michael, a Probate Judge in the Sixth Judicial Circuit in and for Circuit Courts of the State of Florida, held "that all circuit court judges are entitled to hear and determine anything properly within the court's jurisdiction." Payette v. Clark, 559 So.2d 630 (Fla. 2nd DCA 1990).

The issue of whether or not Judge Alvarez had jurisdiction to hear T. Carlton Richardson's disputed fee issues was clearly settled as cited above in the case of T. Carlton Richardson, Appellant, v. Roosevelt Jones, Sr., as Personal Representative of the Estate of Luela King, Deceased, Appellee. 508 So.2d 739 (Fla. 2d DCA). The Second District Court of Appeals held that Judge Alvarez **DID** have jurisdiction of all subject matter.

Judicial Immunity is a sacred principle which removes the Sword of Damocles from over a judge's head and frees him to act where the parties themselves have been unable to make a decision or

settle their disputes. Quoting from Bradley v. Fisher, 13 Wall 335, at 347; 20 L.Ed. 646 (1872), the United States Supreme Court in Stump clearly explained the judicial immunity principle:

> ... "a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequences to himself."
>
> ..."judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction and are alleged to have been done maliciously or corruptly." Stump, supra, at 1104.

The Unites States Court of Appeals, Eleventh Circuit, in the Dykes v. Hosemann, 776 F.2d 942 (1985) set forth five policy reasons for judicial immunity. It is only appropriate that these reasons be set forth herein for the purposes of showing the total failure of the Respondent's arguments. The Dykes Court stated as follows:

> ... five policy reasons for judicial immunity: **FIRST**, and foremost, a judge must be free to act upon his own convictions without apprehension of personal consequences; **SECOND**, the controversiality and importance of the competing interests in a case before a court make it likely that the losing party may be overly willing to ascribe malevolent motives to the judge; **THIRD**, judges faced with the prospect of defending damages actions and, perhaps, satisfying money judgments would be driven to wasteful and destructive self-protection devices and, moreover, may be less inclined to administer justice; **FOURTH**, alternative remedies such as appeal and impeachment reduce the need for private rights of action against judges; and **FIFTH**, the ease of alleging bad faith would make a qualified "good faith" immunity virtually worthless because judges would constantly be forced to defend their motivations in court. Dykes, supra, at 949. (Emphasis added.)

During his disciplinary hearing, the Respondent propounded the argument that because he had withdrawn and been discharged as the attorney of record in the probate proceeding, Judge Alvarez no longer had jurisdiction over him, and therefore could not have ordered him to remit any monies. This argument took a direct enemy SCUD missile hit.

The Court in the Dykes case clearly dispelled such an argument and cloaked the judge with subject matter jurisdiction immunity. The Dykes Court held that withdrawing judicial immunity for a judge who has subject matter, but not personal jurisdiction over a party affected by his ruling conflicts with all of the five policies set forth by the Dykes Court for judicial immunity. Dykes, supra, at 949.

Basic legal research would show that Judge Alvarez and all of the judges sued by T. Carlton Richardson in the federal court had judicial immunity and therefore were not subject to damages of any nature or kind.

RES JUDICATA: Res Judicata means the end. It is over. Finished! Fini! However, the Respondent herein fails to grasp this fundamental theory of law.

T. Carlton Richardson plowed through the Florida Courts and was obviously not happy with the results. Then he drafted and filed the duplicitous federal lawsuit seeking damages against the Florida judges and, as an afterthought, "Oh, by the way, give me an injunction."

As stated several times above, the Respondent's federal complaint was a total re-hash of all issues that were resolved in the Florida courts. The Respondent may feel that his rights were violated, but so have the rights of the defendants sued in his federal lawsuit. The State of Florida and all defendants have a right to have an end to tedious litigation. The Florida court rulings were plainly conclusive of all issues raised in the federal suit.

A person cannot litigate to a final decision in one court system and then launch a collateral attack in another court system to litigate again the issues so determined.

"Such a practice would place no end to litigation." Doran v. Kennedy, 237 U.S. 362, 35 S.Ct. 615, 617, 59 L.Ed. 996.

LACK OF FEDERAL JURISDICTION: Minimal legal research would also disclose that the Respondent's federal suit raised probate matters that fall within the "well recognized principle of judicial comity that in in rem actions the first court obtaining jurisdiction over the property or res may exercise it to the exclusion of another." Monogram Industries, Inc. v. Zellen, 467 F. Supp. 122 (D.C. Mass. 1979). Further, "the equity powers conferred upon federal courts by the Judiciary Act of 1789 and its successors included only that power held by the English Chancery Court in 1789 which did not extend to the probating or administration of estates." Payne v. Hook, 74 U.S. (8 Wall.) 425, 19 L.Ed. 260 (1869).

Put another way, "federal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heirs' and other claimants against a decedent's estate 'to establish their claims', **SO LONG AS THE FEDERAL COURT DOES NOT INTERFERE** with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court." Republic of Iraq v. First National Bank, 353 F.2d 47 (2d Cir. 1965). (Emphasis added.)

In his federal lawsuit, the Respondent merely reargued the probate jurisdiction question and the entitlement to his legal fees. The state trial court clearly had jurisdiction to hear these issues. The state trial court had jurisdiction of the probate assets. The state trial court clearly had the requisite probate and general jurisdiction. The state trial court rulings were affirmed by the state appeals court.

Notwithstanding the fact that res judicata and/or judicial immunity would prevent a reasonably competent attorney from filing the federal lawsuit under discussion herein, the federal court would not have been able to intercede in a probate case predicated upon the facts as pled in the Respondent's federal lawsuit. Even if T. Carlton Richardson had filed this identical federal pleading during the pendency of the state probate proceedings, the federal court would not have had jurisdiction.

CONCLUSION TO COUNT I

The evidence presented by the Florida Bar as to the allegations of Count I do not present an easy open and shut case.

However, after much research on the part of this referee and after much consideration of the facts and evidence, this Referee finds that T. Carlton Richardson is guilty of a violation of Count I.

The standard applicable to the facts of this case is an **OBJECTIVE STANDARD**; i.e., what would a reasonably competent attorney under similar circumstances have concluded? Research disclosed that a reasonably competent attorney under similar circumstances would not have filed the federal complaint and would have known that it was, as the federal court said, manifestly frivolous and malicious. Research by a reasonably competent attorney would have disclosed that the federal lawsuits filed by the Respondent would have been frivolous and that the principles of (1) judicial immunity, (2) res judicata, and/or (3) lack of federal jurisdiction would have prevented the filing of a lawsuit. In a proceeding before the United States Supreme Court, Chief Justice Warren Burger, in the case of Clark v. Florida, 475 U.S. 1134, 90 L.Ed.2d 330, 106 Sup.Ct. 1784, summed up a similar circumstance with the following poignant language:

> This curious sequence suggests the dangers of a legal system, of legal education that trains students in technique without installing a sense of professional responsibility and ethics - a bit like giving a small boy a loaded pistol without instructions as to when and how it is to be used. Had he thus conducted himself after finishing law school and before being admitted to practice the State would plainly have been entitled to conclude that he was unfit to be a member of the Bar. Id at 1137.

COMMENTS AND DETERMINATIONS UPON THE EVIDENCE AS TO COUNT II

RULE 4-3.1: A lawyer shall not engage in conduct intended to disrupt a tribunal.

The Court finds that the Florida Bar **DID NOT** present any evidence on this charge.

COMMENTS AND DETERMINATIONS UPON THE EVIDENCE AS TO COUNT III

RULE 4-8.4(d): A lawyer shall not engage in conduct that is prejudicial to the administration of justice.

The Court finds that the Florida Bar **DID NOT** present any evidence on this charge.

III. **RECOMMENDATION AS TO WHETHER OR NOT THE RESPONDENT SHOULD BE FOUND GUILTY:** As to each count of the complaint I make the following recommendations as to guilt or innocence:

AS TO COUNT I

I recommend that the Respondent be found **GUILTY** and specifically that he be found guilty of a violation of filing a manifestly frivolous and malicious lawsuit against the Honorable F. Dennis Alvarez.

AS TO COUNT II

I recommend that the Respondent be found **NOT GUILTY.**

AS TO COUNT III

I recommend that the Respondent be found **NOT GUILTY.**

IV. **RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED:** I recommend that the Respondent be suspended for a fixed period of ninety-one days; thereafter, until the Respondent shall prove rehabilitation and for an indefinite period until the Respondent

shall pay all costs of these proceedings as provided in Rule 3-5.1(e), Rules of Discipline.

V. **PERSONAL HISTORY AND PAST DISCIPLINARY RECORD**: After finding of guilty and prior to recommending discipline to be recommended pursuant to Rule 3-7.6(k)(1)(4), I considered the following personal history and prior disciplinary record of the Respondent, to wit:

AGE: 43
DATE ADMITTED TO THE BAR: 1972
PRIOR DISCIPLINARY CONVICTIONS AND DISCIPLINARY MEASURES IMPOSED THEREIN: The Florida Bar v. T. Carlton Richardson, No. 73,214; 91 day suspension for charging excessive attorney's fees, commencing May 21, 1990.

VI. **STATEMENT OF COSTS AND MANNER IN WHICH COSTS SHOULD BE TAXED**:

The costs which were reasonably incurred by the Florida Bar are attached as Referee's Exhibit 6.

It is apparent that other costs may or may be incurred. It is recommended that all such costs and expenses together with the foregoing itemized costs be charged to the Respondent.

Dated this 7TH day of March, 1991.

Thomas E. Penick, Jr.
THOMAS E. PENICK, JR.
REFEREE

Copies to:

Bonnie L. Mahon, Esq.
T. Carlton Richardson, Esq.